

Decision 11-01-038 January 27, 2011

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Modesto Irrigation District, Merced Irrigation
District,

Complainants,

vs.

Pacific Gas and Electric Company (U39E),

Defendant.

Case 10-05-017
(Filed May 19, 2010)

DECISION APPROVING SETTLEMENT AGREEMENT

1. Summary

This decision approves the settlement between the Modesto Irrigation District, the Merced Irrigation District, and Pacific Gas and Electric Company (PG&E) resolving this complaint. Pursuant to the settlement, PG&E represents and warrants that it has not recovered and will not recover from ratepayers the costs of customer retention activities during the periods subsequent to the issuance of the Commission decisions resolving PG&E's 2003 and 2007 general rate case applications. The proceeding is closed.

2. Background

The complaint alleges that the defendant, Pacific Gas and Electric Company (PG&E), has violated certain terms of the settlement of the revenue requirement phase of PG&E's 2007 general rate case (GRC), Application

(A.) 05-12-002, which the Commission approved in Decision (D.) 07-03-044. According to the complainants, the settlement agreement “disallowed PG&E from spending ratepayer funds for Customer Retention Activities.” Complainants rely on ¶ 19 of the settlement agreement, which appears on pages 8-9 of Appendix C to D.07-03-044 and provides in full:

PG&E’s distribution Customer Services 2007 expenses will be \$431.1 million for electric and gas distribution. This compares to PG&E’s litigation position set forth in the Comparison Exhibit (at 2-4 and 2-15, lines 9 and 11) of \$437.7 million. This reflects a “zero” allocation in expenses for the “customer retention” component of PG&E’s Customer Retention and Economic Development Program. (This compares to the \$2.03 million originally sought by PG&E and reflected in Ex. PG&E-5, at 9-1, Table 9-1, L:1.)

Complainants allege that PG&E has spent nearly \$5 million of ratepayer dollars on customer retention activities between 2007 and 2009, and that such expenditures are in breach of the GRC settlement agreement. As relief, they seek an injunction prohibiting PG&E from spending any further ratepayer dollars on customer retention activities during the time the 2007 settlement remains in effect, as well as fines to deter future violations by PG&E of Commission orders.

PG&E filed its answer on June 28, 2010, asserting that the “zero” allocation provision did not restrict PG&E from engaging in customer retention activities, or limit PG&E from charging such costs to above the line accounts, or to use such above the line accounts to support claims of rate recovery in future rate cases. Moreover, PG&E asserts that the 2007 GRC settlement agreement explicitly grants PG&E authority to engage in customer retention activities as it sees fit.

The assigned Commissioner's August 24, 2010, scoping memo and ruling identified the following issues to be addressed in this proceeding:

1. Does ¶ 19 of the settlement agreement approved in D.07-03-044 preclude PG&E from booking, to above-the-line accounts used to set future rates, any funds spent by it to retain customers, including customers that it may compete with complainants to serve?
2. At the time they entered into the settlement agreement approved in D.07-03-044, were complainants aware of PG&E's position that ¶ 19 of the settlement agreement would not preclude PG&E from seeking recovery from ratepayers of customer retention expenses in future GRCs?
3. Did the complainants, by their conduct during the settlement negotiations or after the issuance of D.07-03-044, and before the filing of this complaint, manifest acceptance of the PG&E position described above?
4. Has PG&E's conduct since the issuance of D.07-03-044 been consistent with the position it took during the settlement negotiations as to its rights under ¶ 19 of the settlement agreement?

The scoping memo and ruling set the matter for evidentiary hearing beginning December 13, 2010, and directed the parties to report to the administrative law judge whether they wished to pursue alternative dispute resolution by no later than October 6, 2010. In response to the parties' timely report in which they represented that they anticipated reaching a settlement of the case, the administrative law judge suspended the procedural schedule by ruling dated October 8, 2010.

By joint motion filed November 15, 2010, the parties moved for adoption of their settlement agreement.¹ The settlement provides that PG&E warrants and represents that (a) it has not recovered from ratepayers the costs of customer retention activities during the periods subsequent to D.07-03-044 (the 2007 GRC application decision) and D.04-05-055 (thee 2003 GRC application decision) because the costs of those activities were not included in PG&E's approved GRC revenue requirements and were not recovered in any other regulatory proceeding, balancing account, memorandum account, or other similar manner, and (b) it did not have a balancing account revenue requirement, or any other ratemaking mechanism to recover such costs during those periods.

3. Discussion

Pursuant to Rule 12.1(d), the Commission will not approve the settlement unless it is reasonable in light of the whole record, consistent with law, and in the public interest.

Given PG&E's assurance that neither its authorized revenue requirement nor any other ratemaking mechanism allows it to recover the disallowed requested costs of customer retention activities, the remaining dispute in this case is whether the GRC settlement agreements bar PG&E from accounting for the costs of customer retention activities as above-the-line expenses and from using such accounting records to support future GRC requests. While both parties face litigation risk as to whether their respective positions will prevail, PG&E's interpretation of its accounting rights under the GRC settlement

¹ The parties concurrently filed a joint motion requesting shortening of time for filing comments on the settlement. As there are no parties other than the settling parties, and as the time for filing comments on the settlement has passed (and the parties have not filed any comments), that motion is moot and therefore denied.

agreements is consistent with usual ratemaking procedure. The settlement agreement to resolve this complaint on PG&E's assurance that it has not recovered the disallowed costs in rates reasonably reflects the litigation risk faced by the parties.

Nothing in the settlement agreement contravenes any statute or Commission decision or rule. The settlement agreement is therefore consistent with applicable law.

The settlement agreement avoiding the time, expense and uncertainty of further litigating and resolving the matter.

4. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Hallie Yacknin is the assigned Administrative Law Judge (ALJ) in this proceeding.

5. Comments on Proposed Decision

The proposed decision of ALJ Yacknin in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code, and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were jointly filed by all parties on January 18, 2011.

Findings of Fact

1. Complainants and PG&E dispute whether PG&E is in breach of the settlement agreements in PG&E's 2003 GRC application (approved in D.04-05-055) and 2007 GRC application (approved in D.07-03-044) by having accounted for the costs of customer retention activities as above-the-line expenses and using such accounting records to support future GRC requests.

2. PG&E represents that neither its authorized revenue requirement nor any other ratemaking mechanism allows it to recover from ratepayers the disallowed requested costs of customer retention activities, and that it has not done so

during the periods subsequent to the 2007 and 2003 GRC application decisions D.07-03-044 and D.04-05-055.

3. PG&E's interpretation of its accounting rights under the GRC settlement agreements is consistent with the Commission's usual ratemaking practice.

4. Based on the whole record, both parties face substantial litigation risk as to whether their respective positions will prevail.

5. The settlement agreement avoids the time, expense and uncertainty of further litigating and resolving the matter.

Conclusions of Law

1. The settlement agreement reasonably reflects the litigation risk faced by the parties.

2. Nothing in the settlement agreement contravenes any statute or Commission decision or rule.

3. The settlement agreement is in the public interest.

4. The s Case 10-05-017 should be closed.

5. Settlement agreement should be approved.

ORDER

IT IS ORDERED that:

1. The settlement agreement is approved.

2. There is no longer a need for hearings in this case.

3. Case 10-05-017 is closed.

This order is effective today.

Dated January 27, 2011, at San Francisco, California.

MICHAEL R. PEEVEY

President

MICHEL PETER FLORIO

CATHERINE J.K. SANDOVAL

Commissioners

Commissioner Timothy Alan Simon, being necessarily absent, did not participate.

